

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 541 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

YUSUF ABDUL RAHMAN BADAM @ MOTO DHAMELI

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN K PAHWA for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr.D.M.Thakkar for Mr. N.K. Pahwa on behalf of the petitioner and Mr. D.P. Joshi, learned AGP for the respondents. The order of detention dated 12.1.99 passed by respondent no.2 - District Magistrate, Panchmahals against the petitioner in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition

under article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner and produced at Annexure:B inter alia indicate that a criminal case vide CR No. 5/99 was registered against the petitioner at Godhra Town Police Station on 2.1.99 in respect to the offence made punishable under sections 323, 353 and 427 of I.P.C. The said matter is pending investigation. Furthermore, the detaining authority has observed in the grounds of detention that on account of the fear of the petitioner, the witnesses are not coming forward to give information against him. That though some of the witnesses have given information on assurance of anonymity, no incidents narrated by the witnesses have been stated in the grounds of detention. Considering the allegations made in the FIR in respect to the criminal case registered against the petitioner, the detaining authority has come to a conclusion that the petitioner is a "dangerous person" within the meaning of section 2(c) of PASA. That resort to general provisions of law is insufficient to prevent the petitioner forthwith from continuing his anti-social activity and as such the impugned order has been passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detention order suffers from serious infirmity of non application of mind. That no incidents alleged to have been narrated by anonymous witnesses have been stated in the grounds of detention nor the detaining authority has stated that whether the petitioner was released on bail or is in judicial custody. That according to the petitioner, the petitioner was released on bail by the competent court in connection with the offence registered against him on 10th January, 1999. That the detaining authority has failed to consider the less drastic remedy of claiming cancellation of bail whereby the subjective satisfaction reached by the detaining authority is vitiated and has rendered the detention order invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case also, the grounds of detention are devoid of any fact to consider whether the detaining authority has considered the alternative remedy particularly less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. In view of the same, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, the petition is allowed and detention order dated 12.1.99 passed by respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Yusuf Abdul Rahman Badam @ Moto Dhameli is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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